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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

PHOENIX SOLUTIONS, INC.,  
Plaintiff,  
v.  
WEST INTERACTIVE CORP.,  
Defendant.

CASE NO. CV09-08156 MRP (SSx)  
PROTECTIVE ORDER

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**PROTECTIVE ORDER**

To expedite the flow of discovery material, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that only materials the parties are entitled to keep confidential are subject to such treatment, and to ensure that the parties are permitted reasonably necessary uses of such materials in preparation for and in the conduct of trial, pursuant to Fed. R. Civ. P. 26(c), it is hereby **ORDERED THAT**:

**I. Definitions**

1. "Party": any party to this action or a subsidiary thereof, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).
2. "Material": all information, documents, testimony, and things produced, served or otherwise provided in this action by the Parties or by non-parties.
3. "Designating Party": a Party or non-party that designates information, documents, or things for production in disclosures, or in responses to discovery as "CONFIDENTIAL", "OUTSIDE – ATTORNEYS' EYES ONLY", or "ATTORNEYS' EYES ONLY – SOURCE CODE."
4. "CONFIDENTIAL" Material: information, documents, and things the Designating Party believes in good faith is not generally known to others, and which the Designating Party (i) would not normally reveal to third parties except in confidence, or has undertaken with others to maintain in confidence, or (ii) believes in good faith is protected by a right to privacy under federal or state law, or any other applicable privilege or right related to confidentiality or privacy.
5. "OUTSIDE – ATTORNEYS' EYES ONLY" Material: information, documents, and things the Designating Party believes in good faith is

1 not generally known to others, and has significant competitive value  
2 such that unrestricted disclosure to others would create a substantial  
3 risk of serious injury, and which the Designating Party (i) would not  
4 normally reveal to third parties except in confidence, or has undertaken  
5 with others to maintain in confidence, or (ii) believes in good faith is  
6 significantly sensitive and protected by a right to privacy under federal  
7 or state law or any other applicable privilege or right related to  
8 confidentiality or privacy.

9 6. "ATTORNEYS' EYES ONLY – SOURCE CODE": source code,  
10 microcode, or other sensitive code (collectively, "SOURCE CODE")  
11 that the Designating Party believes in good faith is not generally known  
12 to others, and has significant competitive value such that unrestricted  
13 disclosure to others would create a substantial risk of serious injury,  
14 and which the Designating Party (i) would not normally reveal to third  
15 parties except in confidence, or has undertaken with others to maintain  
16 in confidence, or (ii) believes in good faith is significantly sensitive and  
17 protected by a right to privacy under federal or state law, or any other  
18 applicable privilege or right related to confidentiality or privacy.

19 7. "Producing Party": a Party or non-party that produces Material in this  
20 action.

21 8. "Receiving Party": a Party that receives Material from a Producing  
22 Party.

23 9. "Designated Material": Material that is designated "CONFIDENTIAL",  
24 "OUTSIDE – ATTORNEYS' EYES ONLY", or "ATTORNEYS'  
25 EYES ONLY – SOURCE CODE" under this Order.

26 10. "Counsel of Record": (i) outside counsel who appears on the pleadings  
27 as counsel for a Party, (ii) partners, principals, associates, and  
28 employees of such outside counsel to whom it is reasonably necessary

1 to disclose the information for this litigation, including supporting  
 2 personnel employed by the attorneys, such as paralegals, legal  
 3 translators, legal secretaries, legal clerks and shorthand reporters,  
 4 and/or (iii) independent legal translators retained to translate in  
 5 connection with this action, or independent shorthand reporters retained  
 6 to record and transcribe testimony in connection with this action.

7 11. "Outside Consultant": a person with specialized knowledge or  
 8 experience in a matter pertinent to the litigation who has been retained  
 9 by Counsel of Record to serve as an expert witness, or as a consultant  
 10 in this action, and who is not a current employee of a Party or of a  
 11 competitor of a Party and who, at the time of retention, is not  
 12 anticipated to become an employee of a Party or of a competitor of a  
 13 Party.

14 12. "Professional Vendors": persons or entities that provide litigation  
 15 support services (e.g., photocopying; videotaping; translating;  
 16 designing and preparing exhibits, graphics, or demonstrations;  
 17 organizing, storing, retrieving data in any form or medium; etc.) and  
 18 their employees and subcontractors who have been retained by Counsel  
 19 of Record in this action. This definition includes professional jury or  
 20 trial consultants retained in connection with this litigation, and mock  
 21 jurors retained by such a consultants to assist them in their work.  
 22 Professional vendors do not include consultants who fall within the  
 23 definition of Outside Consultant.

## 24 **II. Scope**

25 13. The protections conferred by this Order cover not only Designated  
 26 Material (as defined above), but also any information copied or  
 27 extracted therefrom, as well as all copies, excerpts, summaries, or  
 28 compilations thereof. Nothing herein shall alter or change in any way

1 the discovery provisions of the Federal Rules of Civil Procedure, or the  
2 Court's deadlines provided in the Scheduling Order or any other Order.  
3 Identification of any individual pursuant to this Protective Order does  
4 not make that individual available for deposition, or any other form of  
5 discovery outside of the restrictions and procedures of the Federal  
6 Rules of Civil Procedure, the Local Rules of the United States District  
7 Court for the Central District of California, and the Court's deadlines  
8 provided in the Scheduling Order.

9 **III. Access to Designated Material**

10 14. **CONFIDENTIAL Material:** Unless otherwise ordered by the Court  
11 or permitted in writing by the Designating Party, a Receiving Party  
12 may disclose any information, document or thing designated  
13 "CONFIDENTIAL" only to:

14 a) Persons who appear on the face of Designated Material as an  
15 author, addressee or recipient thereof or the original source of the information  
16 contained therein, provided that the person authorized to view Designated Material  
17 under this sub-paragraph a) shall not retain or be given copies of any Designated  
18 Material;

19 b) Counsel of Record;

20 c) Employees of a Receiving Party who are responsible for  
21 providing oversight of or assistance in the litigation, who have signed the  
22 "Acknowledgement and Agreement To Be Bound By Protective Order" attached  
23 hereto as Exhibit A; however, as to Designated Material from third parties, absent a  
24 court order or agreement of the third party, Designated Material from third parties  
25 may not be disclosed to employees of a Receiving Party;

26 d) Outside Consultants of the Receiving Party to whom disclosure  
27 is reasonably necessary for this litigation, and who have signed the  
28

1 "Acknowledgement and Agreement To Be Bound By Protective Order" attached  
2 hereto as Exhibit A;

3 e) Witnesses at deposition and/or trial, provided that such witnesses  
4 may not retain copies of Designated Material unless permitted by other provisions of  
5 this Order;

6 f) The Court and its personnel;

7 g) Any designated arbitrator or mediator who is assigned to hear  
8 this matter, or who has been selected by the Parties, and his or her staff, who have  
9 signed the "Acknowledgement and Agreement To Be Bound By Protective Order"  
10 attached hereto as Exhibit A;

11 h) Court reporters and videographers employed in connection with  
12 this case; and

13 i) Professional Vendors to whom disclosure is reasonably  
14 necessary for this litigation, and a representative of which has signed the  
15 "Acknowledgement and Agreement To Be Bound By Protective Order" attached  
16 hereto as Exhibit A.

17 15. **"OUTSIDE – ATTORNEYS' EYES ONLY" Material:** Unless  
18 otherwise ordered by the Court or permitted in writing by the  
19 Designating Party, a Receiving Party may disclose any information,  
20 documents or things designated "OUTSIDE – ATTORNEYS' EYES  
21 ONLY" only to the following, in addition to those identified in  
22 Paragraphs 27 and 28 below regarding use of Designated Material at  
23 depositions:

24 a) Persons who appear on the face of Designated Material as an  
25 author, addressee or recipient thereof or the original source of the information  
26 contained therein, provided that the person authorized to view Designated Material  
27 under this sub-paragraph a) shall not retain or be given copies of any Designated  
28 Material;

- 1                   b)     Counsel of Record;
- 2                   c)     Outside Consultants of the Receiving Party to whom disclosure
- 3 is reasonably necessary for this litigation, and who have signed the
- 4 "Acknowledgement and Agreement To Be Bound By Protective Order" attached
- 5 hereto as Exhibit A;
- 6                   d)     The Court and its personnel;
- 7                   e)     Any designated arbitrator or mediator who is assigned to hear
- 8 this matter, or who has been selected by the Parties, and his or her staffs, who have
- 9 signed the "Acknowledgement and Agreement To Be Bound By Protective Order"
- 10 attached hereto as Exhibit A;
- 11                  f)     Court reporters and videographers employed in connection with
- 12 this case; and
- 13                  g)     Professional Vendors to whom disclosure is reasonably
- 14 necessary for this litigation, and a representative of which has signed the
- 15 "Acknowledgement and Agreement To Be Bound By Protective Order" attached
- 16 hereto as Exhibit A.

17       16.   **"ATTORNEYS' EYES ONLY – SOURCE CODE" Material:**  
18           Unless otherwise ordered by the Court or permitted in writing by the  
19           Designating Party, a Receiving Party may disclose any information,  
20           documents or things designated "ATTORNEYS' EYES ONLY -  
21           SOURCE CODE" only to the following, in addition to those identified  
22           in Paragraphs 27 and 28 below regarding use of Designated Material at  
23           depositions:

- 24                  a)     Persons who appear on the face of Designated Material as an
- 25 author, addressee or recipient thereof;
- 26                  b)     Counsel of Record;
- 27                  c)     Outside Consultants of the Receiving Party to whom disclosure
- 28 is reasonably necessary for this litigation, and who have signed the



1 "Acknowledgement and Agreement To Be Bound By Protective Order" attached  
2 hereto as Exhibit A;

3 d) The Court and its personnel;

4 e) Any designated arbitrator or mediator who is assigned to hear  
5 this matter, or who has been selected by the Parties, and his or her staffs, who have  
6 signed the "Acknowledgement and Agreement To Be Bound By Protective Order"  
7 attached hereto as Exhibit A;

8 f) Court reporters and videographers employed in connection with  
9 this case; and

10 g) Professional Vendors to whom disclosure is reasonably  
11 necessary for this litigation, and a representative of which has signed the  
12 "Acknowledgement and Agreement To Be Bound By Protective Order" attached  
13 hereto as Exhibit A.

14 17. Each person to whom Designated Material may be disclosed, and who  
15 is required to sign the "Acknowledgement and Agreement To Be  
16 Bound By Protective Order" attached hereto as Exhibit A, shall do so,  
17 prior to the time such Designated Material is disclosed to him or her.  
18 Counsel for a Party who makes any disclosure of Designated Material  
19 shall retain each original executed certificate and, upon written request,  
20 shall provide copies to counsel to all other Parties at the termination of  
21 this action.

22 18. At the request of the Designating Party, persons not permitted access to  
23 Designated Material under the terms of this Protective Order shall not  
24 be present at depositions while the Designating Party's Designated  
25 Material is discussed or otherwise disclosed. Pre-trial and trial  
26 proceedings shall be conducted in a manner, subject to the supervision  
27 of the Court, to protect Designated Material from disclosure to persons  
28 not authorized to have access to such Material. Any Party intending to

1 disclose or discuss Designated Material at pretrial or trial proceedings  
2 must give advance notice to assure the implementation of the terms of  
3 this Protective Order.

#### 4 **IV. Access By Outside Consultants**

5 19. **Notice.** If a Receiving Party wishes to disclose another Party's  
6 Designated Material to any Outside Consultant, such Receiving Party  
7 must provide notice to counsel for the Designating Party, which notice  
8 shall include: (a) the individual's name and business title; (b) business  
9 address; (c) business or profession; (d) the individual's CV; (e) any  
10 previous or current relationship (personal or professional) with any of  
11 the parties; (f) a list of other cases in which the individual has testified  
12 (at trial or deposition) within the last seven years; (g) a signed copy of  
13 the "Acknowledgement and Agreement To Be Bound By Protective  
14 Order" attached as Exhibit A; and (h) a list of all non-confidential  
15 employment or consultations the expert has had in the preceding four  
16 years. To the extent that there is a confidential employment or  
17 consultation arrangement, the Receiving Party shall disclose, to the  
18 extent possible without violating any confidentiality obligations, (i) the  
19 industry in which the relationship(s) took place, (ii) the general  
20 technology involved, (iii) the dates of the relationship(s), (iv) a  
21 statement of whether the relationship(s) was with a competitor of any  
22 other party, and (v) any non-confidential information available about  
23 the relationship(s) that would describe or tend to describe the  
24 circumstances of the relationship(s). If any of the information in (i)  
25 through (v) above cannot be disclosed because of confidentiality  
26 obligations, the Receiving Party must identify which category or  
27 categories of information is or are not being disclosed. The original of  
28 each such notice shall be maintained by counsel proposing the expert.

1 A party proposing such expert or consultant shall respond within three  
2 (3) Court days to any reasonable request for additional information  
3 regarding the employment or consulting relationships or other  
4 professional activities of the proposed expert or consultant.;

5 20. **Objections.** The Designating Party shall have five (5) business days  
6 from receipt of the notice specified in Paragraph 19 to object in writing  
7 to such disclosure (plus three (3) extra days if notice is given other than  
8 by hand delivery, e-mail transmission or facsimile transmission). Any  
9 such objection must set forth in detail the grounds on which it is based.  
10 After the expiration of the 5-day (plus 3-days, if appropriate) period, if  
11 no objection has been asserted, then Designated Material may be  
12 disclosed to the Outside Consultant pursuant to the terms of this Order.  
13 However, if the Designating Party objects within the 5-day (plus 3-  
14 days, if appropriate) period, the Receiving Party may not disclose  
15 Designated Material to the challenged individual absent resolution of  
16 the dispute or Court Order. In the event the Designating Party makes a  
17 timely objection, the parties shall promptly meet and confer to try to  
18 resolve the matter by agreement. If the parties cannot reach an  
19 agreement, the Objecting Party may, within three (3) business days  
20 following the meet and confer, file a motion for a protective order  
21 preventing disclosure of Designated Material to the Outside Consultant,  
22 or for other appropriate relief. If the objecting party fails to file a  
23 motion for protective order within the prescribed period, any objection  
24 to the Outside Consultant is waived, and Designated Material may  
25 thereafter be disclosed to such individual (upon signing the  
26 "Acknowledgement and Agreement To Be Bound By Protective Order"  
27 attached hereto as Exhibit A). If the Objecting party files a timely  
28 motion for a protective order, Designated Material shall not be

disclosed to the challenged individual until and unless a final ruling allowing such disclosure is made by this Court, or by the consent of the Objecting party, whichever occurs first.

**V. Production of ATTORNEYS' EYES ONLY – SOURCE CODE Material**

21. Unless otherwise agreed to in writing between the Producing Party and the Receiving Party, SOURCE CODE designated as "ATTORNEYS' EYES ONLY – SOURCE CODE" shall only be provided on stand-alone computers (that is, computers not connected to a network, Internet or a peripheral device) or hard drives and shall not be loaded on any computer connected to a network, Internet or peripheral device, and the computers and hard drives shall contain security software enabling only authorized users to access this material. In addition to the SOURCE CODE, the stand-alone computers or hard drives shall contain the software used to develop the SOURCE CODE, if that software is possessed by the Producing Party and is not subject to restrictions regarding its use that would preclude the Producing Party from providing copies. In the event of such restrictions, the parties shall meet and confer in good faith as to how to reasonably enable the Receiving Party to view the source code.

22. The Producing Party will produce the relevant SOURCE CODE in its entirety (i.e., all code necessary for compilation) in computer searchable format pursuant to the provisions in Paragraph 21 above, but need not produce in executable format absent a specific request from the Receiving Party which a Receiving Party will only make when necessary.

23. The Producing Party will allow printing of paper copies of specific portions of SOURCE CODE designated as "ATTORNEYS' EYES ONLY – SOURCE CODE." The entire code or an unnecessarily large

1 portion of the code shall not be printed. The party printing paper  
2 copies of any SOURCE CODE designated as "ATTORNEYS' EYES  
3 ONLY – SOURCE CODE" must always keep that SOURCE CODE at  
4 the office of the Receiving Party's Outside Counsel of Record, and in a  
5 secured container at the Receiving Party's Outside Counsel of Record  
6 when not in use. Paper copies of SOURCE CODE designated as  
7 "ATTORNEYS' EYES ONLY – SOURCE CODE" shall include Bates  
8 number and confidentiality labels when printed.

9 **VI. Prosecution Bar**

10 24. Unless otherwise agreed to in writing between a Producing Party, any  
11 individual affiliated with the Receiving Party (including, but not  
12 limited to, experts, consultants, or in-house or outside counsel) who  
13 personally receives any material designated "CONFIDENTIAL,"  
14 OUTSIDE — ATTORNEYS' EYES ONLY," "ATTORNEYS' EYES  
15 ONLY – SOURCE CODE" by a Producing Party, and labeled as such  
16 by the Producing Party, shall not participate in or be responsible for the  
17 acquisition, preparation or prosecution of any patent, patent application,  
18 reexamination petition, or reissue application, or for drafting or revising  
19 patent claims, directed to speech recognition technology (including  
20 natural language recognition technology), from the time of receipt of  
21 such material through and including one (1) year following the first to  
22 occur of (i) the complete resolution of this case through entry of a final  
23 non-appealable judgment or order for which appeal has been exhausted  
24 or (ii) the complete settlement of all claims against all the Parties in this  
25 action.

26 **VII. Use Of Designated Material**

27 25. **Use Of Designated Material By Receiving Party.** Unless otherwise  
28 ordered by the Court, or agreed to in writing by the Parties, all

1 Designated Material, and all information derived therefrom, shall be  
2 used by the Receiving Party only for purposes of this litigation, and  
3 shall not be used in any other way, or for any other purpose.  
4 Information contained or reflected in Designated Materials shall not be  
5 disclosed in conversations, presentations by parties or counsel, in court  
6 or in other settings that might reveal Designated Material, except in  
7 accordance with the terms of this Order.

8 26. **Use Of Designated Material By Designating Party.** Nothing in this  
9 Order shall limit any Designating Party's use of its own documents and  
10 information, nor shall it prevent the Designating Party from disclosing  
11 its own confidential information, documents or things to any person.  
12 Such disclosure shall not affect any designations made pursuant to the  
13 terms of this Order, so long as the disclosure is made in a manner that  
14 is reasonably calculated to maintain the confidentiality of the  
15 information.

16 27. **Use of Designated Material at Depositions.** Except as may be  
17 otherwise ordered by the Court, any person may be examined as a  
18 witness at depositions and trial, and may testify concerning all  
19 Designated Material of which such person has prior knowledge,  
20 without in any way limiting the generality of the following:

21 a) A present director, officer, employee, designated Rule 30(6)(b)  
22 witness, and/or Outside Consultant of a Producing Party may be examined, and may  
23 testify concerning all Designated Material which has been produced by that party;

24 b) A former director, officer, agent and/or employee of a Producing  
25 Party may be interviewed, examined and may testify concerning all Designated  
26 Material of which he or she has prior knowledge, including any Designated Material  
27 that refers to matters of which the witness has personal knowledge, which has been  
28

1 produced by that Party and which pertains to the period or periods of his or her  
2 employment; and

3 c) Non-parties may be examined or testify concerning any  
4 document containing Designated Material of a Producing Party which appears on its  
5 face, or from other documents or testimony, to have been received from, or  
6 communicated to, the non-party as a result of any contact or relationship with the  
7 Producing Party, or a representative of such Producing Party. Any person other than  
8 the witness, his or her attorney(s), and any person qualified to receive Designated  
9 Material under this Order, shall be excluded from the portion of the examination  
10 concerning such information, unless the Producing Party consents to persons other  
11 than qualified recipients being present at the examination. If the witness is  
12 represented by an attorney who is not qualified under this Order to receive such  
13 information, then prior to the examination, the attorney shall be requested to sign the  
14 "Acknowledgement and Agreement To Be Bound By Protective Order" attached as  
15 Exhibit A. In the event that such attorney declines to sign the "Acknowledgement  
16 and Agreement To Be Bound By Protective Order" prior to the examination, the  
17 parties, by their attorneys, shall jointly seek a protective order from the Court  
18 prohibiting such attorney from disclosing such Designated Material.

19 28. A witness who previously had access to a document designated  
20 "OUTSIDE – ATTORNEYS' EYES ONLY," or "ATTORNEYS'  
21 EYES ONLY – SOURCE CODE," but who is not under a present non-  
22 disclosure agreement with the Producing Party that covers that  
23 document, may be shown the document if the witness is advised on the  
24 record of the existence of the Protective Order and that the protective  
25 order requires the parties to keep confidential any questions, testimony  
26 or documents that are designated as "CONFIDENTIAL", "OUTSIDE –  
27 ATTORNEYS' EYES ONLY", or "ATTORNEYS' EYES ONLY –  
28 SOURCE CODE". The witnesses may not copy, take notes on or retain



1 copies of any Designated Material used or reviewed at the deposition.  
2 The witness may not take out of the deposition room any exhibit that is  
3 marked "CONFIDENTIAL", "OUTSIDE – ATTORNEYS' EYES  
4 ONLY", or "ATTORNEYS' EYES ONLY – SOURCE CODE". The  
5 Producing Party of any Designated Material used at the deposition may  
6 also require that the transcript and exhibits not be copied by the witness  
7 or his counsel, that no notes may be made of the transcript or the  
8 exhibits, and that the transcript and exhibits may only be reviewed by  
9 the witness in the offices of one of the counsel representing a party in  
10 this case (or another firm acting for one of the counsel representing a  
11 party in this case and under the supervision of one of the lawyers who  
12 is bound by the terms of this Order). The restrictions in this paragraph  
13 apply only to a witness who is not subject to this Order.

#### 14 **VIII. Procedure for Designating Materials**

15 29. Subject to the limitations set forth in this Order, a Designating Party  
16 may: designate as "CONFIDENTIAL" information that the Designating  
17 Party believes, in good faith, meets the definition set forth in Paragraph  
18 4 above; designate as "OUTSIDE – ATTORNEYS' EYES ONLY"  
19 information that it believes, in good faith, meets the definition set forth  
20 in Paragraph 5 above; designate as "ATTORNEYS' EYES ONLY –  
21 SOURCE CODE" information that it believes, in good faith, meets the  
22 definition set forth in Paragraph 6 above.

23 30. Except as provided above in Section V with respect to "ATTORNEYS'  
24 EYES ONLY – SOURCE CODE" Material, any material (including  
25 physical objects) made available for initial inspection by counsel for  
26 the Receiving Party prior to producing copies of selected items shall  
27 initially be considered, as a whole, to constitute "OUTSIDE –  
28 ATTORNEYS' EYES ONLY" information, and shall be subject to this



1 Order. Thereafter, the Producing Party shall have ten (10) calendar  
2 days from the inspection to review and designate the appropriate  
3 documents as "CONFIDENTIAL," or "OUTSIDE – ATTORNEYS'  
4 EYES ONLY."

5 31. Except as otherwise provided in this Order or as otherwise stipulated or  
6 ordered, Material that qualifies for protection under this Order must be  
7 designated in accordance with this Section VIII before the material is  
8 disclosed or produced.

9 32. Designation in conformity with this Order requires:

10 a) For information in documentary form (apart from transcripts of  
11 depositions, or other pretrial or trial proceedings), the Producing Party shall affix the  
12 legend "CONFIDENTIAL" or "OUTSIDE – ATTORNEYS' EYES ONLY" or  
13 "ATTORNEYS' EYES ONLY – SOURCE CODE", on each page that contains  
14 Designated Material;

15 b) For testimony given in deposition, or in other pretrial or trial  
16 proceedings, the Designating Party shall specify any portions of the testimony that it  
17 wishes to designate as "CONFIDENTIAL", "OUTSIDE – ATTORNEYS' EYES  
18 ONLY" or "ATTORNEYS' EYES ONLY – SOURCE CODE.". In the case of  
19 depositions, the Designating Party may also designate any portion of a deposition  
20 transcript as "CONFIDENTIAL," "OUTSIDE – ATTORNEYS' EYES ONLY" or  
21 "ATTORNEYS' EYES ONLY – SOURCE CODE" by informing the reporter, and  
22 opposing Parties, in writing within thirty (30) calendar days of receipt of the  
23 deposition transcript of the designations to be applied. All deposition transcripts not  
24 marked at least "CONFIDENTIAL" during the deposition will nonetheless be  
25 treated as "CONFIDENTIAL" until the thirty (30) day period has expired.  
26 Transcript pages containing Designated Material must be separately bound by the  
27 court reporter, who must affix to the top of each such page the legend  
28

1 "CONFIDENTIAL", "OUTSIDE – ATTORNEYS' EYES ONLY" or  
 2 "ATTORNEYS' EYES ONLY – SOURCE CODE"; and

3 c) For information produced in some form other than documentary,  
 4 and for any other tangible items, the Producing Party shall affix in a prominent place  
 5 on the exterior of the container or containers in which the information or thing is  
 6 stored the legend "CONFIDENTIAL", "OUTSIDE – ATTORNEYS' EYES ONLY"  
 7 or "ATTORNEYS' EYES ONLY – SOURCE CODE."

#### 8 **IX. No Waiver of Privilege**

9 33. Inspection or production of documents (including physical objects)  
 10 shall not constitute a waiver of the attorney-client privilege, work  
 11 product immunity, or any other applicable privilege or immunity, if,  
 12 after the Producing Party becomes aware of any inadvertent or  
 13 unintentional disclosure, the Producing Party designates any such  
 14 documents as within the attorney-client privilege, work product  
 15 immunity or any other applicable privilege or immunity, and requests  
 16 in writing return of such documents to the Producing Party. Upon  
 17 request by the Producing Party, the Receiving Party shall immediately  
 18 retrieve and return all copies of such inadvertently produced  
 19 document(s). Nothing herein shall prevent the Receiving Party from  
 20 challenging the propriety of the attorney-client privilege, work product  
 21 immunity or other applicable privilege or immunity designation by  
 22 submitting a written challenge to the Court.

#### 23 **X. Inadvertent Failure To Designate**

24 34. An inadvertent failure to designate qualified information, documents or  
 25 things as "CONFIDENTIAL", "OUTSIDE – ATTORNEYS' EYES  
 26 ONLY", or "ATTORNEYS' EYES ONLY – SOURCE CODE," does  
 27 not, standing alone, waive the Designating Party's right to secure  
 28 protection under this Order for such material. Upon discovery of an

1           inadvertent failure to designate, a Producing Party may notify the  
2           Receiving Party in writing that the material is to be designated as  
3           "CONFIDENTIAL", "OUTSIDE – ATTORNEYS' EYES ONLY" or  
4           "ATTORNEYS' EYES ONLY – SOURCE CODE." Upon receipt of  
5           such notice, the Receiving Party must make reasonable efforts to assure  
6           that the material is treated in accordance with the terms of this Order,  
7           subject to the right to challenge the propriety of such designation(s).  
8           The Producing Party shall provide substitute copies of documents  
9           bearing the confidentiality designation.

10 **XI. Filing Designated Material**

11           35. Any document filed with the Court that reveals any Designated  
12           Material shall be done in accordance with Local Rule 79-5.1 In the  
13           event the court denies the request to file said Designated Material under  
14           seal, the parties shall continue to treat the Designated Material in all  
15           other respects as Designated Material governed under this Order.

16 **XII. Challenges to Confidentiality Designations**

17           36. The Parties will use reasonable care when designating documents or  
18           information as "CONFIDENTIAL", "OUTSIDE – ATTORNEYS'  
19           EYES ONLY" or "ATTORNEYS' EYES ONLY – SOURCE CODE."  
20           Nothing in this Order shall prevent a Receiving Party from contending  
21           that any or all documents or information designated as  
22           CONFIDENTIAL Material, OUTSIDE – ATTORNEYS' EYES ONLY  
23           Material or ATTORNEYS' EYES ONLY – SOURCE CODE Material  
24           have been improperly designated. A Receiving Party may, at any time,  
25           request that the Producing Party cancel or modify the confidentiality  
26           designation with respect to any document or information contained  
27           therein.  
28

1        37. A Party shall not be obligated to challenge the propriety of a  
2        "CONFIDENTIAL", "OUTSIDE – ATTORNEYS' EYES ONLY" or  
3        "ATTORNEYS' EYES ONLY – SOURCE CODE" designation at the  
4        time made, and the failure to do so shall not preclude a subsequent  
5        challenge thereto. Such a challenge shall be written, shall be served on  
6        counsel for the Producing Party, and shall identify particularly the  
7        documents or information that the Receiving Party contends should be  
8        differently designated. If such negotiation fails to resolve the dispute  
9        within five (5) days of receipt of the written notice, the procedure for  
10       obtaining a decision from the Court is that set forth in Local Rule 37.  
11       If the parties wish to file a Joint Stipulation, required by Local Rule 37,  
12       under seal, the parties may file a stipulation to that effect or the moving  
13       party may file an ex parte application making the appropriate request.  
14       The parties must set forth good cause in the stipulation or ex parte  
15       application as to why the Joint Stipulation or portions thereof should be  
16       filed under seal. The information shall remain as designated until the  
17       Court has ruled upon the motion or the parties have agreed otherwise.  
18       Any order requiring disclosure shall be drawn as narrowly as possible  
19       to protect the interests of all parties concerned.

20       **XIII. Protected Material Subpoenaed or Ordered Produced In Other**  
21       **Litigation**

22       38. If a Receiving Party is served with a subpoena or a court order that  
23       would compel disclosure of any information, documents or things  
24       designated in this action as "CONFIDENTIAL", "OUTSIDE –  
25       ATTORNEYS' EYES ONLY" or "ATTORNEYS' EYES ONLY –  
26       SOURCE CODE", the Receiving Party must so notify the Designating  
27       Party, in writing (by fax and email) promptly, and in no event more  
28       than ten (10) calendar days after receiving the subpoena or order. Such

1 notification must include a copy of the subpoena or order. The  
2 Receiving Party also must immediately inform, in writing, the party  
3 who caused the subpoena or order to issue that some or all of the  
4 material covered by the subpoena or order is subject to this Protective  
5 Order. In addition, the Receiving Party must deliver a copy of this  
6 Protective Order promptly to the party in the other action that caused  
7 the subpoena or order to issue. The purpose of imposing these duties is  
8 to alert the interested parties to the existence of this Protective Order  
9 and to afford the Designating Party in this case an opportunity to try to  
10 protect its confidentiality interests in the court from which the  
11 subpoena or order issued. The Designating Party shall bear the burdens  
12 and the expenses of seeking protection in that court of its Designated  
13 Material. Nothing in these provisions should be construed as  
14 authorizing or encouraging a Receiving Party in this action to disobey a  
15 lawful directive from another court.

#### 16 **XIV. Unauthorized Disclosure Of Designated Material**

17 39. If a Receiving Party learns that, by inadvertence or otherwise, it has  
18 disclosed Designated Material to any person or in any circumstance not  
19 authorized under this Order, the Receiving Party must immediately (a)  
20 notify in writing the Designating Party of the unauthorized disclosures,  
21 (b) use its best efforts to retrieve all copies of the Designated Material,  
22 (b) inform the person or persons to whom unauthorized disclosures  
23 were made of all the terms of this Order, and (c) request such person or  
24 persons to execute the "Acknowledgment and Agreement to Be Bound"  
25 that is attached hereto as Exhibit A.

#### 26 **XV. Non-Party Use of this Protective Order**

27 40. A non-party that produces Material voluntarily, or pursuant to a  
28 subpoena or a court order, may designate such Material in the same

1 manner, and shall receive the same level of protection under this  
2 Protective Order, as any Party to this lawsuit.

- 3 41. A non-party's use of this Protective Order to protect its  
4 "CONFIDENTIAL" Material, "OUTSIDE – ATTORNEYS' EYES  
5 ONLY" or "ATTORNEYS' EYES ONLY – SOURCE CODE" Material  
6 does not entitle that non-party access to "CONFIDENTIAL" Material,  
7 "OUTSIDE – ATTORNEYS' EYES ONLY" or "ATTORNEYS' EYES  
8 ONLY – SOURCE CODE" Material produced by any Party in this  
9 case.

10 **XVI. Discovery from Outside Consultants**

- 11 42. Testifying experts' draft reports, notes, and outlines of draft reports  
12 shall not be subject to discovery in this case, nor shall any such drafts,  
13 notes or outlines of draft reports that the testifying expert prepared in  
14 other cases, be subject to discovery in this case; provided, however,  
15 that the total number of hours billed by each expert and the total  
16 compensation received by each expert for his or her work on this matter  
17 are discoverable.
- 18 43. Discovery of materials provided to testifying experts shall be limited to  
19 those materials, facts, consulting expert opinions, and other matters  
20 actually relied upon by the testifying expert in forming his or her final  
21 report, trial or deposition testimony, or any opinion in this case. No  
22 discovery can be taken from any consulting expert who does not testify,  
23 except to the extent that consulting expert has provided information,  
24 opinions or other materials to a testifying expert, who then relies upon  
25 such information, opinions or other materials in forming his or her final  
26 report, trial or deposition testimony or any opinion in this case.
- 27 44. No conversations or communications between Counsel of Record, or  
28 individuals acting on its behalf, and any testifying or consulting expert

1 will be subject to discovery unless the conversations or  
2 communications are relied upon by such experts in formulating  
3 opinions that are presented in reports, trial or deposition testimony in  
4 this case.

5 45. Expert reports, a schedule showing each expert's billing rate, total  
6 number of hours billed on this matter and total billings (to be  
7 supplemented before trial), and any non-work product documents,  
8 materials or other information the experts relied on will be produced on  
9 the date expert disclosures are due. To the extent any such documents  
10 and other information has been previously produced in the litigation,  
11 production of a schedule listing such documents and information by  
12 Bates number and other information sufficient to identify the document  
13 and its location is sufficient.

14 46. Materials, communications and other information exempt from  
15 discovery under the foregoing Paragraphs shall be treated as attorney-  
16 work product for the purposes of this litigation and Protective Order.

17 **XVII. Communications between Party and Counsel of Record**

18 47. Privileged or protected communications or materials transmitted  
19 between a Party and its Counsel of Record subsequent to the initiation  
20 of this Case need not be recorded on the Party's privilege log in this  
21 Case except upon a showing of good cause by a Party, and upon an  
22 Order of this Court.

23 **XVIII. Duration**

24 48. Even after the termination of this action, the confidentiality obligations  
25 imposed by this Order shall remain in effect until a Designating Party  
26 agrees otherwise in writing or a court order otherwise directs.  
27  
28



1 **XIX. Final Disposition**

2 49. Unless otherwise ordered or agreed in writing by the Producing Party,  
3 within sixty (60) calendar days after the final termination of this action,  
4 each Receiving Party must destroy or return all Designated Material to  
5 the Producing Party. As used in this Paragraph, "all Designated  
6 Material" includes all copies, abstracts, compilations, summaries or any  
7 other form of reproducing or capturing any of the Designated Material.  
8 The Receiving Party must submit a written confirmation of the return  
9 or destruction to the Producing Party (and, if not the same person or  
10 entity, to the Designating Party) by the 60-day deadline.  
11 Notwithstanding this provision, Counsel of Record may retain an  
12 archival copy of all pleadings, motion papers, deposition transcripts  
13 (including exhibits), transcripts of other proceedings (including  
14 exhibits), expert reports (including exhibits), discovery requests and  
15 responses (including exhibits), exhibits offered or introduced into  
16 evidence at trial, legal memoranda, correspondence or attorney work  
17 product, even if such materials contain Designated Material. Any such  
18 archival copies that contain or constitute Designated Material remain  
19 subject to this Protective Order as set forth in Section XVIII.  
20 (Duration), above.

21 **XX. Miscellaneous**

22 50. This Order is entered without prejudice to the right of any Party to  
23 apply to the Court at any time for modification of this Order, when  
24 convenience or necessity requires. Nothing in this Order abridges the  
25 right of any person to seek to assert other objections. No Party waives  
26 any right it otherwise would have to object to disclosing or producing  
27 any information, documents, or things on any ground not addressed in  
28 this Protective Order. Similarly, no Party waives any right to object on



1 any ground to the use in evidence of any of the material covered by this  
2 Protective Order. The Court shall take appropriate measures to protect  
3 Designated Material at trial and any hearing in this case.

4 51. This Order shall not diminish any existing obligation or right with  
5 respect to Designated Material, nor shall it prevent a disclosure to  
6 which the Designating Party consents in writing before the disclosure  
7 takes place.

8  
9 IT IS SO ORDERED.

10  
11 DATED: February 11, 2010



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14 Mariana R. Pfaelzer  
15 UNITED STATES DISTRICT JUDGE  
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**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND  
BY PROTECTIVE ORDER**

I, \_\_\_\_\_ [print or type full name], state:

1. I reside at \_\_\_\_\_;

2. My present employer is \_\_\_\_\_;

3. My present occupation or job description is \_\_\_\_\_;

4. I agree to keep confidential all information provided to me in the matter of *Phoenix Solutions, Inc. v. West Interactive Corp.*, Case No. CV09-08156 MRP (SSx) in the United States District Court for the Central District of California, and to be subject to the authority of that Court in the event of any violation or dispute related to this agreement.

5. I have been informed of and have reviewed the Protective Order entered in this case, and I will not divulge any information, documents or things that are subject to the Protective Order except in accordance with the provisions of the Order;

6. I state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on \_\_\_\_\_

\_\_\_\_\_  
[printed name]

\_\_\_\_\_  
[signature]